



THE CITY OF SAN DIEGO
CITIZENS' EQUAL OPPORTUNITY COMMISSION
REGULAR BUSINESS MEETING

**CD of Recorded Minutes available upon request*

MINUTES

Wednesday, August 4, 2010 - 6 P.M. – 8 P.M.
City Administration Building
Council Committee Room
202 C Street – 12th Floor
San Diego, CA 92101

Commissioners Present:

Dr. Shirley Weber (Chairperson)
Mike Olivier
Juan Gallegos

Brad Barnum
Debbie Day
Ron Cho

Excused/ absent Commissioners: Maurice Wilson, Stamp Corbin

MAYOR'S STAFF:

Debra Fischle-Faulk, Administration Department Director
Hildred Pepper, Purchasing & Contracting Department Director
Laura Davis, Equal Opportunity Contracting Program, WPO

- I. CALL TO ORDER:** The meeting was called to order at 6:05 p.m. by Chairperson Shirley Weber, who also introduced newly appointed Commissioner Mike Olivier.
- II. APPROVAL OF MINUTES AND AGENDA:** The Agenda was unanimously approved. Minutes from July 7, 2010 approved with corrections requested by Commissioner Barnum.
- III. PUBLIC COMMENT: NONE**

IV. PRESENTATION: Proposed Equal Benefits Ordinance by Pam Ison

Pam Ison, District 3 Council Representative presented Councilmember Todd Gloria's proposed Equal Benefits Ordinance. (Powerpoint Attached)

There was extensive discussion regarding the following issues:

- How will the Administration Department be able to enforce the Ordinance?
 - Living Wage Ordinance Division will enforce the Ordinance with little impact to their program.
- What are the effects of the Proposed Equal Benefits Ordinance on Small Businesses?
 - The fiscal impact will be spread out evenly.
- How have the other Cities dealt with this ordinance?
 - Pam Ison responded that they are currently collecting data.
 - Small Business waiver was suggested.

Commissioners asked a number of questions regarding the impacts on small businesses, exemptions, monitoring, etc. They requested additional information regarding other City ordinances and clarification on exemptions. Ms. Ison agreed to provide the information requested.

V. ACTION ITEMS: None

VI. STAFF REPORT: Debra Fischle-Faulk – Director's Program Update for CEOC

Small Local Business Enterprise Program – Effective 7/1/2010

- **Application Workshops held:**
 - 4/8/2010 – Mayor's Initial Announcement @ Balboa Park Club
 - 5/19/2010 – Balboa Park Club Bidders Symposium
 - 5/25/2010 – Tubman Chavez Multicultural Center
 - 6/1/2010 – DVBE Meeting, Balboa Park Club
 - 6/3/2010 – Subs for Subs, Balboa Park Club
 - 6/3/2010 – Turner School of Construction Management Airport Authority Facilities Maintenance Building
 - 6/4/2010 – City Protégés, War Memorial Building
 - 7/20/2010 – Asian Business Association Meeting
- **165** applications received, **79** approved **73** pending **13** denied
- Announcement with application posted on City's website
- Application posted on P&C's vendor website 6/7/2010
- Several notices sent out to City's database and several Caltrans certified firms
- 3 notices with application sent out to Minor Construction Program participants

- **Program Presentations:**

Radio coverage on SBAs station

4/9/2010 Consultant Group Presentation

4/14/2010 Public Agency Consortium (PAC) meeting

5/26/2010 Consultant Group Presentation

5/27/2010 Mtg. w/President SD Regional Minority Supplier Development Council

7/28/2010 Supplier Diversity Week

- Goal Setting Committee established-2nd meeting 7/19/2010
- Bid discount application spreadsheet developed being reviewed by P&C
- Bid Specifications drafted and approved
- Good Faith documents finalized – using Caltrans forms
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- Prior Minor Construction Program sunset – new SLBE Program for small contracts applies
- 11 new projects – 5 restricted competition to SLBE/ELBE's, 5 SLBE/ELBE goals established, 1 SCOPE

Contract Compliance Software Package

- Historical data loaded, working on FY2010 data – download scheduled 8/6/2010
- Labor Compliance, Contract Compliance, and Vendor Compliance modules loaded
- Contractor training late July, early August (firm searches, payroll submittals, monthly report submittals)
- Certification module to be loaded in early August
- Loaded data demonstration – 4/8/2010
- Weekly conference calls and data sharing
- Configuration complete

Internal Audit

- Complete, corrective actions begun.
- Presented at 6/14/2010 Audit Committee meeting
- Vice Chair Corbin attended and addressed Committee

Federal/State Funded Projects

- Caltrans, SCOPE goal calculation review meeting August
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- Prepared and submitted required program, annual and project-by-project goals to FAA
- EPA, CDBG, FHWA, CALTRANS, FEMA and Clean Water State Revolving Fund (CWSRF) programmatic goals have updated and included in bid specs.
- HUD Annual Report for period 1 submitted to CDBG staff

Labor / Contract Compliance

- Fine assessed \$2,695 – unlisted sub
- Recovered \$60,000 sub payment based on final summary report review
- Identified & investigating potential documentation falsification issues
- Weekly staff meetings to review projects, sites visits, etc.
- Issues being identified and addressed (i.e. missing payrolls, recent employee complaint)
- Conducting compliance audit on large project – identified underpaid employees

Other

- New Main Library Project approved with 20-30 % goals
- Council member Todd Gloria's Equal Benefits Ordinance
- Civic Center (New City Hall) ballot initiative

VII. DISCUSSION ITEMS: NONE

VIII. SUBCOMMITTEE REPORT: NONE

IX. COMMISSIONERS ANNOUNCEMENTS:

- The Commissioners position on the Local Hiring Program Ordinance was prepared by and signed by Chair Weber and forwarded to City Council.
- Interviews for EOCP Program Manager are complete a decision will be made as soon as all references are checked.

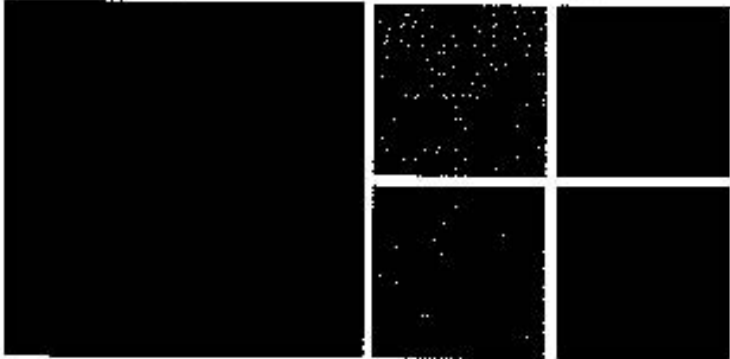
X. CHAIR'S REPORT: NONE

XI. ADJOURMENT: 7:30 P.M

*****Materials Provided**



- I. Agenda
- II. Minutes of July 7, 2010
- III. Staff Report plus attachments

8/4/2010



Equal Benefits Ordinance for the City of San Diego
CITYWIDE EQUAL OPPORTUNITY COMMISSION
WEDNESDAY, AUGUST 4, 2010

Councilmember Todd Gloria
Council District Three
City of San Diego

Councilmember Todd Gloria
City of San Diego
Third Council District

Equal Benefits Ordinance


Background

In 1987, San Francisco became the first city to implement an Equal Benefits Ordinance (EBO) requiring all contractors doing business with the city to offer employees in a domestic partnership the same benefits offered to married employees.


Today, the State of California has in place an EBO along with several cities and counties throughout the United States:

- Atlanta, GA
- Berkeley, CA
- Brevard County, FL
- King County, WA
- Los Angeles, CA
- Miami Beach, FL
- Minneapolis, MN
- Oakland, CA
- Olympia, WA
- Portland, ME
- Sacramento, CA
- Salt Lake City, UT
- San Francisco, CA
- San Mateo County, CA
- Seattle, WA
- Thurston, WA

8/4/2010



Councilmember Todd Gloria
City of San Diego
Chief Council Analyst




EBO Policy Goals


The purpose of an EBO is equal treatment — "Equal pay for equal work."

- A contractor that offers health insurance and other benefits to employees' spouses must offer equivalent coverage to employees' domestic partners.
- An EBO would not require City contractors to begin offering benefits not already offered.
- If a contractor does not offer benefits to married employees, it is not required to offer benefits to employees in domestic partnerships.

The EBO will bring the City's contracting practices in line with non-discrimination laws, prohibiting City contractors from discriminating against employees based on sexual orientation and marital status. Employees of City contractors shall be paid the same total compensation (i.e. have the same access to benefits), regardless of whether the employee's household is organized around his or her marriage or domestic partnership.



Councilmember Todd Gloria
City of San Diego
Chief Council Analyst



What does the Equal Benefits Ordinance require?

This law would require that City contractors who provide benefits to employees with spouses to provide the same benefits to employees with domestic partners.

If a business is not contracting with the City of San Diego, this ordinance would not apply to that business.

8/4/2010



Commissioner Todd Gloria
City of San Diego
Third Council District

What benefits are included?

The Ordinance applies to all benefits offered by an employer. Examples: bereavement leave, family medical leave, medical, dental, and vision benefits, membership or membership discounts, moving expenses, travel and relocation benefits, and retirement plans.

How does the Ordinance define a "domestic partner"?

"Domestic partner" means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration, or with an internal registry maintained by the employer of at least one of the domestic partners.



Commissioner Todd Gloria
City of San Diego
Third Council District


What types of agreements are covered by the Ordinance?

The Ordinance covers all City agreements. This includes agreements for grants, services, the purchase of goods, construction, and leases.

The Ordinance applies to the following:

- Any contractor that has an agreement with the City.
- All of the City contractor's other operations located within the City limits, even if those operations are not involved in the City agreement.
- Any of the contractor's operations if it is on property owned by the City, or on property that the City has a right to occupy.
- The contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the subject City agreement.

8/4/2010




Councilmember Todd Gloria
City of San Diego
Third Council District

What is a covered contractor required to do under the Ordinance?

The Ordinance requires the contractor to:

- Certify that equal benefits will be provided to employees with spouses and to employees with domestic partners.
- Post a copy of the following statement in an area frequented by employees: "During the performance of a contract with the City of San Diego, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."
- Allow the City access to records so that the City can verify compliance with the Ordinance.



Councilmember Todd Gloria
City of San Diego
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Exceptions & Waivers

Waivers may be granted in the following situations:


- The contractor is a prime provider of needed goods or services.
- The contractor is the only bidder or contractor willing to enter into an agreement with the City for use of City property.
- The agreement is necessary to respond to an emergency situation that endangers the public health or safety, and no contractors that comply with the law are immediately available.
- The agreement involves operational litigation as certified by the City Attorney's Office.
- The contractor is a public entity providing a good, service, or access to real property that is not available from any other source.
- The contractor is a public entity and the good or service is necessary to serve a substantial public interest.
- The application of the Ordinance would conflict with the terms or conditions of a prior agreement with a public agency.
- The agreement is essential to the City or the City's operations and no other contractor that complies with the Ordinance is available.
- The agreement is for a bulk purchasing agreement through City, county, state, or regional entities that is in the City's purchasing unit.
- The agreement involves the procurement of capabilities or resources to serve the City's financial goals that would violate a fiduciary duty.

■ This Ordinance does not apply to any collective bargaining agreement (CBA) that was in effect prior to the Ordinance becoming applicable to the contractor.

8/4/2010



City of San Diego
Third Council District




Enforcement


The City of San Diego's Administration Department would be responsible for the enforcement of the ESO.

If the contractor fails to comply with the ordinance:

- The action may be deemed as a material breach of contract;
- Awarding authority may cancel, terminate or suspend, in whole or in part, the contract;
- Monies due or to become due under the contract, may be retained by the City until compliance is achieved;
- City may also pursue any and all other remedies lawfully allowed;




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Third Council District




In summary...

If a company is seeking to enter into a contract with the City of San Diego and...	the law requires...
currently does not provide benefits to any employees	NO CHANGE to your benefit policy
currently provides an employee benefits package that covers employees only (not spouses)	NO CHANGE to your benefit policy
currently provides an employee benefits package that covers employees' spouses	that you offer an EQUALIZED BENEFITS PACKAGE to employees with a domestic partner

8/4/2010




Councilmember Todd Gloria
City of San Diego
Third Council District




The right thing to do...

San Diego continues to lead in promoting mutual respect and understanding among all people by protecting basic human rights and creating an atmosphere that promotes amicable relationships among all members of our community.

To further San Diego's rich history of civil rights, the City of San Diego should implement an EBO and put the City's purchasing power to work to further equity for all. Through our contracting process, we can assure that companies who choose to do business with the City equalize the total compensation between similarly situated spouses and those with domestic partners.



Councilmember Todd Gloria
City of San Diego
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Previous actions

- June 16, 2010: The City's Human Relations Commission unanimously endorsed the proposed Equal Benefits Ordinance. They have formalized their position in a letter sent to the Mayor and City Councilmembers.
- June 20, 2010: The City Council's Rules Committee unanimously endorsed the proposed EBO and directed that its office, the Mayor, City Attorney and IBA prepare an ordinance and the proper amendments to the San Diego Municipal Code for implementation of an EBO and return to full Council for consideration.

Requested action

- Councilmember Gloria seeks the Citizens' Equal Opportunity Commission's support for the proposed Equal Benefits Ordinance for the City of San Diego.

CITY OF SAN DIEGO
Equal Opportunity Contracting
Director's Program Update for Citizens Equal Opportunity Commission
August 4, 2010

Small Local Business Enterprise Program – Effective 7/01/10

Application workshops:

4/08/10 Mayor's Initial Announcement Balboa Park Club
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5/25/10 Tubman Chavez Multicultural Center
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6/02/10 Subs for Subs, Balboa Park Club
6/03/10 Turner School of Construction Management Airport Authority Facilities
Maintenance Building
6/04/10 City protégés, War Memorial Building
7/20/10 Asian Business Association Meeting

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July 12, 2010

TO: Council President Ben Hueso and Members of the City Council

FROM: Shirley N. Weber, Chair
Citizens Equal Opportunity Commission

RE: Local Jobs Ordinance

At the monthly meeting, July 7, 2010, the Commission considered the local jobs ordinance coming before the council soon. While we applaud the efforts of the Council to create more opportunities for the residents of San Diego, we had some concern regarding the necessity and effectiveness of such an ordinance. Therefore, we offer the following suggestions and observations:

- Is the Local Jobs Ordinance necessary? On the surface it sounds good; however, when we looked at the data for the city, it appears that the majority of hiring on city projects is local. We strongly suggest that you examine the data before approving an ordinance that is not necessary.
- Like many ordinances in the area of employment and opportunity, this has no consequences for non compliance. Our experience leads us to understand that mere suggestions and recommendations have no impact unless there are financial consequences for non compliance. Failure to comply with this ordinance results in no action against the contractor.
- This is a new program without staffing which means it will place additional burden on an already overburdened staff that has difficulty meeting all the requirements of federal, state and local regulations. Without positive consequences from this new program, it seems unwise to add a program unless staffing is recommended.
- Can this program be properly monitored anyway? Verification of residence is difficult. If records are inaccurate, out dated, etc, what happens? Will this program invite fraud? Once again, there are no consequences for any of this.

The commission is concerned that we are adding programs that may not have positive impacts on hiring and equal opportunity. The fact that the same staff responsible for equal opportunity will be monitoring this program is problematic because of limited staff available for the enormous task of equal opportunity. We strongly recommend that the council respond to the concerns expressed above before approving the local jobs ordinance.

